

Senate Bill No. 246

CHAPTER 480

An act to add Section 1648 to the Health and Safety Code, relating to human milk.

[Approved by Governor September 26, 2006. Filed with
Secretary of State September 26, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

SB 246, Figueroa. Human milk.

Existing law provides that the procurement, processing, distribution, or use of human milk for human consumption constitutes the rendition of a service, and not a sale of the human milk for any purpose.

Existing law provides for the licensure and regulation of tissue banks by the State Department of Health Services.

This bill would require a hospital that collects, processes, stores, or distributes human milk collected from a mother exclusively for her own child to comply with specified standards until or unless the department approves alternative standards. It would also exempt a hospital from the tissue bank licensure and regulation requirements for the purpose of collecting, processing, storing, or distributing human milk collected from a mother exclusively for her own child. The bill would exempt from any screening test requirement human milk collected from a mother exclusively for her own child.

This bill would not apply to any hospital that collects, processes, stores, or distributes milk from human milk banks or other outside sources.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) There is consensus among health care experts and institutions that breastfeeding is the superior method of feeding and nurturing infants.

(b) The American Dietetic Association states that "human milk provides optimal nutrition to the infant, with its dynamic composition and the appropriate balance of nutrients provided in easily digestible and bioavailable form."

(c) According to the American Academy of Pediatrics 2005 policy statement, "human milk is species-specific, and all substitute feeding preparations differ markedly from it, making human milk uniquely superior for infant feeding." The policy statement also asserts that "research in developed and developing countries of the world, including middle-class populations in developed countries, provides strong evidence

that human milk feeding decreases the incidence and severity of a wide range of infectious diseases, including bacterial meningitis, bacteremia diarrhea, respiratory tract infection, necrotizing enterocolitis, otitis media, urinary tract infection, and late-onset sepsis in preterm infants. In addition, postneonatal infant mortality rates in the United States are reduced by 21 percent in breastfed infants. Some studies suggest decreased rates of sudden infant death syndrome in the first year of life and reduction of insulin-dependent (type 1) and noninsulin-dependent (type 2) diabetes mellitus, lymphoma, leukemia, Hodgkin's disease, overweight and obesity, hypercholesterolemia, and asthma in older children and adults who were breastfed, compared with individuals who were not breastfed.

(d) The American Academy of Pediatrics recommends that infants be exclusively breastfed for approximately six months before being introduced to complementary foods.

(e) Too few women in California exclusively breastfeed their infants in the early postpartum period, let alone in the first six months of life, as recommended by the American Academy of Pediatrics.

(f) There are also racial and ethnic disparities with regard to breastfeeding rates. While 61.8 percent (down from 64 percent in 2001) of white women in California are exclusively breastfeeding in the hospital, only 40 percent of Asians, 27 percent of Pacific Islanders, 30 percent of African-American women, and 29 percent (down from 30 percent in 2001) of Latinas are doing so.

(g) In "Breastfeeding: Investing in California's Future," the Breastfeeding Promotion Committee Report to the California Department of Health Services Primary Care and Family Health (1996) there was a finding that "... women look to health care providers for breastfeeding information and support; however, health care systems, policies, and personnel often unknowingly interfere with the initiation and continuation of breastfeeding." This report also states that health care professionals are in a key position to effect breastfeeding success, and promotional efforts will be successful only if women who are encouraged to breastfeed encounter providers who are able to respond to their needs.

(h) Current California law inadvertently discourages the feeding of breast milk to infants in the hospital by requiring a hospital that permits a mother to store her milk in a hospital refrigerator to obtain and maintain a full tissue bank license.

(i) Hospitals that cannot complete the process for obtaining a full tissue bank license cannot legally allow a mother to store her milk in a refrigerator on the hospital premises.

(j) A mother whose infant is admitted to a hospital may not be able to be physically present to breastfeed the infant at each feeding time, and may wish to store her milk in a refrigerator or freezer on the hospital premises. Many hospitals wish to permit mothers to do this, but are unable to do so due to the lengthy and complicated process required to obtain a full tissue bank license from the State of California.

(k) It is the intent of the Legislature to adopt policies that promote and encourage the breastfeeding of all infants, including those who are hospitalized.

SEC. 2. Section 1648 is added to the Health and Safety Code, to read:

1648. (a) A hospital that collects, processes, stores, or distributes human milk collected from a mother exclusively for her own child shall comply with the most current standards established for the collection, processing, storage, or distribution of human milk by the Human Milk Banking Association of North America until or unless the department approves alternative standards.

(b) A hospital shall be exempt from the requirements of Chapter 4.1 (commencing with Section 1635) for the purpose of collecting, processing, storing, or distributing human milk collected from a mother exclusively for her own child.

(c) Notwithstanding any other provision of law, no screening tests shall be required to be performed on human milk collected from a mother exclusively for her own child.

(d) The department shall assess hospital processes for collecting, processing, storing, or distributing human milk pursuant to its current practice, as required by Chapter 2 (commencing with Section 1250).

(e) This section does not apply to any hospital that collects, processes, stores, or distributes milk from human milk banks or other outside sources.